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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,213	12/05/2003	Peter G. Klimko	2444 US	9504

7590 12/11/2007

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EXAMINER	
RAMACHANDRAN, UMAMAHESWARI	
ART UNIT	**PAPER NUMBER**
1617	

MAIL DATE	DELIVERY MODE
12/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/729,213	KLIMKO ET AL.	
	Examiner	Art Unit	
	Umamaheswari Ramachandran	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 September 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The examiner notes the receipt of the amendments and remarks received in the office on 9/28/2007 amending claim 1. Claim 1 is pending.

Response to Remarks

The rejections of claim 1 under 35 U.S.C. 102(e) as being anticipated by Crapo et al. (US 6,544,975) and under 35 U.S.C. 102(e) as being anticipated by Crapo et al. (US 2004/0023941) are withdrawn due to the amendment of claim 1. Applicants' arguments regarding the rejection of claim 1 as being unpatentable over Crapo et al. (US 6,544,975) in view of Kato et al. (U.S. 5,665,769) have been fully considered and found not persuasive. Applicants' arguments regarding the rejection of claim 1 as being unpatentable over Crapo et al. (US 2004/0023941) in view of Kato et al. (U.S. 5,665,769) have been fully considered and found not persuasive. Applicants' amendment necessitated the modified 103(a) rejections presented in this office action and hence the office action is made final.

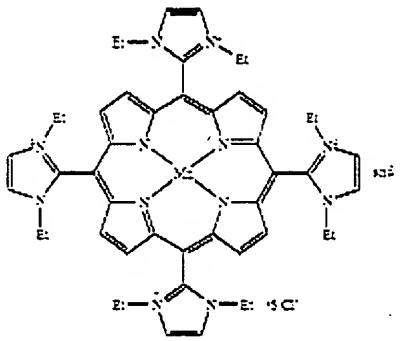
Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crapo et al. (US 6,544,975) in view of Kato et al. (U.S. 5,665,769).

Crapo et al. teach the compound of formula I (figure 1c). The reference further teaches that the compound can be used for the treatment of glaucoma, cataract and macular degeneration of the eye (col. 8, lines 15-20).



(Formula I)

The reference do not teach a method of treating diabetic retinopathy or retinal edema with compound of formula I.

Kato et al. teach macular degeneration and retinal edema as retinal diseases (col. 1, lines 10-40).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use compound of formula I in the treatment of retinal edema. The motivation to do so is provided by Crapo and Kato et al. Crapo teach the compound of formula (I) in a method of macular degeneration and Kato et al. teaches that retinal edema and macular degeneration are both retinal diseases. Hence one of ordinary skill in the art at the time of the invention would have been motivated to use the compound of formula I in the treatment of retinal edema as the compound has been shown to be successful in the treatment of another retinal disorder.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crapo et al. (US 2004/0023941) in view of Kato et al. (U.S. 5,665,769).

Crapo et al. teach the compound of formula I, as above (p 29). The reference further teaches that the compound can be used for the treatment of glaucoma, cataract and macular degeneration of the eye (p 5, para 0047).

The reference do not teach a method of treating diabetic retinopathy or retinal edema with compound of formula I.

Kato et al. teach macular degeneration and retinal edema as retinal diseases (col. 1, lines 10-40).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use compound of formula I in the treatment of retinal edema. The motivation to do so is provided by Crapo and Kato et al. Crapo teach the compound of formula (I) in a method of macular degeneration and Kato et al. teaches that retinal edema and macular degeneration are both retinal diseases. Hence one of ordinary skill

in the art at the time of the invention would have been motivated to use the compound of formula I in the treatment of retinal edema as the compound has been shown to be successful in the treatment of another retinal disorder.

Response to Arguments

Applicants' argue that the use of a compound that can treat macular degeneration to treat retinal edema would not necessarily be obvious simply because both are disorders of retina. Applicants' describe the differences in the retinal disorders and argue that it is not necessarily obvious to treat retinal edema with a compound that is useful in the treatment of macular degeneration. In response, retinal disorders such as diabetic retinopathy, macular degeneration or retinal edema are all neovasular diseases and it would have been obvious to one of ordinary skill in the art at the time of the invention to treat a retinal disorder such as retinal edema or diabetic retinopathy with the same superoxidase dismutase compound that has been taught to be useful in another retinal disorder such as macular degeneration by Crapo. Crapo teaches the compound of formula I to be useful in the treatment of macular degeneration and Kato teach retinal edema and macular degeneration are retinal disorders. Hence it would have been obvious to one of ordinary skill in the art at the time of the invention to use compound of formula I to treat retinal edema. One of ordinary skill in the art would have been motivated in expectation of success as the compound has been shown to be useful in the treatment of another retinal disorder such as macular degeneration.

Conclusion

Applicant's amendment necessitated the modified rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Umamaheswari Ramachandran whose telephone number is 571-272-9926. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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